Supreme Court, U.S.
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No. 94-711

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

UNITED MINE WORKERS OF AMERICA
DISTRICT 28,

Petitioner,

v.

ISLAND CREEK COAL COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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*David J. Laurent, Esquire
POLITO & SMOCK, P.C.
Four Gateway Center, Suite 400
Pittsburgh, Pennsylvania 15222
(412) 394-3333

Daniel L. Fassio, Esquire
1800 Washington Road
Pittsburgh, Pennsylvania 15241
(412) 831-4104

*Counsel of Record

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QUESTION PRESENTED FOR REVIEW

Respondent, Island Creek Coal Company, does not agree with Petitioner's statement of the question presented. Instead, Island Creek Coal Company submits that the question presented for review is whether an arbitrator, in a private labor arbitration subject to review under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. Section 185(a), exceeds the scope of his authority by awarding punitive damages where the collective bargaining agreement does not expressly empower the arbitrator to issue punitive awards?

LIST OF PARTIES TO THE PROCEEDINGS

The parties to this proceeding are the United Mine Workers of America, District 28, and Island Creek Coal Company.

E.I. DuPont deNemours & Company and RWE A.G., through a series of wholly owned subsidiaries, own all of the stock of Island Creek Coal Company.

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UNITED MINE WORKERS OF AMERICA
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On Petition for Writ of Certiorari
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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

Petitioner seeks review of the decision by the United States Court of Appeals for the Fourth Circuit reported as Island Creek Coal Company v. District 28, United Mine Workers of America, 29

F.3d 126 (4th Cir. 1994), which affirmed the decision of the District Court reported as Island Creek Coal Company v. Local Union 2232, United Mine Workers of America, 832 F.Supp. 165 (W.D. Va. 1993).

STATUTE INVOLVED

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. Section 185(a), provides as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

COUNTERSTATEMENT OF THE CASE

I. Nature of the Case

Island Creek Coal Company ("Island Creek") filed this action under Section 301(a) of the Labor Management Relations Act ("Act"), 29 U.S.C. Section 185(a), to vacate a November 11, 1992 private labor arbitration award issued by Bernard H. Cantor which, among other things, directed Island Creek to pay a $1,000.00 penalty. (Appendix ("App.") at 108-109.) The District Court found that Arbitrator Cantor exceeded the scope of his authority under the parties' National Bituminous Coal Wage Agreement of 1988 ("NBCWA") by awarding punitive damages and, therefore, vacated that portion of his Award. (App. at 108-129.) The Court of Appeals for the Fourth Circuit affirmed the District Court's ruling. (App. at 130-59.)

II. Factual Background

The parties' NBCWA contained a mandatory means for resolving disputes arising under that Agreement which included a three-step grievance procedure followed, if necessary, by final and binding arbitration. (App. at 2-4.) On or about November 13, 1991, an employee filed a grievance alleging that a foreman had violated the NBCWA by performing classified work. The parties were not able to resolve this grievance and the matter was referred to arbitration. Ultimately, Arbitrator Cantor found that Island Creek had violated the NBCWA and issued the following Award:

> The grievance of Kenneth Wagner, No. ICC-88-28-92-292 is hereby ALLOWED on the following terms:
>
> 1. Grievant is allowed compensation for 1/2 a shift

pay at straight time.

2. The cease and desist order applicable to this mine entered by Arbitrator Lugar, restated by Arbitrator Judah, is hereby restated.

3. A penalty for failure to obey the cease and desist order, based on the experience since the Juda order, is hereby imposed in the amount of $1,000.00 to be paid to the Union.

(App. at 80-81.)

SUMMARY OF THE ARGUMENT

There is no conflict among the Circuits that have addressed the narrow question of whether an arbitrator, in a private labor arbitration subject to review under Section 301(a) of the Labor Management Relations Act ("Act"), 29 U.S.C. Section 185(a), may award punitive damages where the collective bargaining agreement does not expressly authorize the arbitrator to issue punitive awards. The three Circuits (First, Fourth, and Ninth) that have addressed this narrow question have unanimously held that an arbitrator exceeds the scope of his authority by issuing such an award. Although, as Petitioner asserts, several Circuits have upheld punitive arbitration awards, those decisions are distinguishable because they involved commercial arbitrations, agreements that expressly authorized punitive awards,

and/or awards which were determined to be compensatory, rather than punitive. Therefore, there is no conflict among the Circuits.

Moreover, there is no other reason for granting the petition for writ of certiorari. Although a court's review of labor arbitration awards is severly circumscribed under Section 301(a), an award may be vacated where, as here, the arbitrator exceeded the scope of his authority under the collective bargaining agreement. Further, the Court of Appeals' decision does not leave Petitioner without an effective remedy. Petitioner received full compensatory damages and retains the right to seek, by way of collective bargaining, express authority for an arbitrator to award punitive damages in an appropriate case.

Accordingly, the petition for writ of certiorari should be denied.

ARGUMENT

I. There Is No Conflict Among The Circuits.

The Court of Appeals, relying on several of its prior decisions under Section 301(a) of the Act, 29 U.S.C. Section 185(a), held that Arbitrator Cantor exceeded the scope of his authority by issuing a punitive award since the NBCWA did not expressly empower an arbitrator to issue such awards. The Court Appeals' decision on this narrow question is consistent with those of the only other Circuits to have addressed it. The First Circuit reached the same conclusion in Bacardi Corporation v. Congresso de Uniones Industriales de Puerto Rico, 692 F.2d 210, 214 (1st Cir. 1982) ("The arbitrator's opinion cites no provision of the contract authorizing punitive damages or attorney's fees . . . . We must conclude that the award of such

damages did not draw its essence from the collective bargaining agreement and that the arbitrator clearly exceeded his authority"), and the Ninth Circuit reached the same conclusion in Howard P. Foley Company v. International Brotherhood of Electrical Workers, 789 F.2d 1421, 1423 (9th Cir. 1986) ("The award of damages in the present case does not draw its essence from the CBA for the agreement's essence does not contemplate punitive, but only compensatory awards.")

Petitioner asserts that there is a conflict among the Circuits because several Circuits have upheld punitive arbitration awards. On close examination, however, it is apparent that there is no true conflict as the cases Petitioner cites, along with other cases Island Creek has found, all are distinguishable.

Several of the cases Petitioner

cites involve commercial arbitrations which were being referenced under the Federal Arbitration Act and/or the Rules of the American Arbitration Association. See Raytheon Company v. Automated Business Systems, Inc., 882 F.2d 6 (1st Cir. 1989); Lee v. Chica, 983 F.2d 883 (8th Cir. 1993), cert. denied, 114 S.Ct. (1993); Todd Shipyards Corp. v. Cunard Line, Ltd., 943 F.2d 1056 (9th Cir. 1991); Willoughby Roofing & Supply Company v. Kajima International, Inc., 776 F.2d 269 (11th Cir. 1985).

This factual distinction is significant because commercial arbitrations are not constrained by the federal policies which apply to labor arbitrations under Section 301(a) of the Act, 29 U.S.C. Section 185(a). As the Court of Appeals for the First Circuit observed in Raytheon Company:

> Relying on two labor

arbitration cases (one of them our own), Raytheon argues that arbitrators must have explicit contractual authorization before they can award punitive damages. [Citations omitted.] However, the concerns which may warrant such a rule in the labor arbitration field are not present in the commercial arbitration context. Labor arbitration is an integral aspect of the entire collective bargaining process; it is intended to be part of a continuing and ameliorating enterprise between parties who maintain an ongoing working relationship.

. . . .

Commercial arbitration, by contrast and as this case

> itself exemplifies, is normally considered a one-shot endeavor, in which the parties have chosen arbitration not as a means of ongoing dispute resolution, but as a "simpl[e], informal[], and expeditio[us] method of resolving a particular dispute . . . . Given the profound differences between these two types of arbitration, the [labor] cases are of little relevance to our decision here and we must, therefore, focus our attention on cases addressing the propriety of punitive awards in commercial arbitration settings. (Emphasis added.)

882 F.2d at 10-11. See also Todd Shipyards Corporation, 943 F.2d at 1062 n.5.

One case Petitioner cites can be distinguished because the collective bargaining agreement authorized the arbitrator to award more than compensatory damages. In Goss Golden West Sheet Metal, Inc. v. Sheet Metal Workers International Union, Local 104, 933 F.2d 759, 764 (9th Cir. 1991), the Court upheld the punitive award only because the collective bargaining agreement expressly authorized the arbitrator to award "such relief to either party as [it] deem[s] necessary and proper, including awards of damages or other compensation." (Emphasis added.)

Specific language in the collective bargaining agreement similarly supported the punitive awards upheld in Dorado Beach Hotel Corporation v. Union de Trabajadores, 959 F.2d 2, 4 n.3 (1st Cir. 1992) ("The arbitrator's finding that the

CBA and the parties' submissions authorized the imposition of double damages distinguishes this case from Bacardi Corp. . . . ."), and International Association of Heat and Frost Insulators v. General Pipe Covering, Inc., 792 F.2d 96, 100 (8th Cir. 1986) ("In this case, the Agreement expressly stated that where either party violated any of its provisions, '[t]he Trade Board [would] have the power to award fines or other penalties'").

Petitioner's remaining cases are distinguishable because the awards were found to be compensatory, rather than punitive, or the court declined to resolve the issue presented herein. In Local 369, Bakery and Confectionary Workers International Union of America, 514 F.2d 1235 (5th Cir. 1975), the Court of Appeals for the Fifth Circuit declined to rule on the question of whether an

arbitrator was inherently authorized to issue a punitive award since the award in that case could be considered compensatory. In Local 120, International Molders and Allied Workers Union, 892 F.2d 1283, 1291 (6th Cir. 1990), the Court of Appeals for the Sixth Circuit concluded that the award could be considered either as compensatory or punitive and, for that reason, deferred to the arbitrator. In Local 416, Sheet Metal Workers International Association v. Helgesteel Corporation, 507 F.2d 1053, 1057-58 (7th Cir. 1974), the Court of Appeals for the Seventh Circuit declined to rule on the propriety of a punitive award, finding that the entire dispute should be rearbitrated before a different body.

Although not cited in Petitioner's brief, the remaining decisions by the Circuits that have addressed the subject

of punitive labor arbitration awards all are equally distinguishable from this case.

Several of these decisions involve disputes arising under the Railway Labor Act, 45 U.S.C. Section 153. See Union Pacific Railroad Company v. United Transportation Union, 3 F.3d 255 (8th Cir. 1993); International Association of Machinists and Aerospace Workers v. Northwest Airlines, Inc., 858 F.2d 427 (8th Cir. 1988); Brotherhood of Railroad Trainmen v. Central of Georgia Railway Company, 415 F.2d 403 (5th Cir. 1969). The fact that these cases involve the Railway Labor Act distinguishes them from cases subject to review under Section 301(a) of the Act, 29 U.S.C. Section 185(a). Northwest Airlines, Inc., 858 F.2d at 431.

In another case, Georgia Power Co. v. International Brotherhood of

Electrical Workers, Local 84, 995 F.2d 1030, 1032 (11th Cir. 1993), cert. denied, 114 S.Ct. 1644 (1994), the Court of Appeals for the Eleventh Circuit declined to address the issue, finding that "even if authority existed for punitive damages, the arbitrator's own findings foreclose any argument that a punitive damage award was warranted in this case."

Accordingly, on the narrow question of whether an arbitrator, in a private labor arbitration subject to review under Section 301 of the Act, exceeds the scope of his authority by issuing a punitive award where the collective bargaining agreement does not expressly empower the arbitrator to issue such awards, there is no conflict among the Circuits, Instead, the few Circuits that have addressed the issue (First, Fourth, and Ninth) have unanimously concluded that the arbitrator

exceeds the scope of his authority by issuing a punitive award.

II. Petitioner's Remaining Arguments Do Not Warrant Granting The Petition For Writ Of Certiorari.

Petitioner also argues that the Court of Appeals' decision should be reviewed because (a) it interferes with federal labor policy in that it leaves Petitioner without an effective remedy, and (b) it violates this Court's decision in United Paperworkers International Union v. Misco, 484 U.S. 29 (1987).[1] Petitioner is wrong on both counts.

A. Petitioner Is Not Left Without An Effective Remedy.

Petitioner claims that, as a matter of federal labor policy, an arbitrator

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[1] Petitioner's further argument that the Court of Appeals ignored the parties' so-called custom does not warrant a writ of certiorari under Rule 10 of the Rules of the Supreme Court of the United

(Footnote continued)

should be deemed to have the power to issue punitive awards in the absence of a provision in the collective bargaining agreement which expressly withholds such authority. Petitioner reasons that the authority to issue punitive awards must be inferred as a matter of law as that is the only way to remedy violations of a prior arbitrator's cease and desist order. Petitioner is mistaken.

The grievant in this case was fully compensated for all time lost as a consequence of Island Creek's breach of the collective bargaining agreement and violation of a prior arbitrator's decision on the same subject matter. Therefore, the only question is whether this Court should, as a matter of law, infer that an arbitrator has the

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[1](continued)
States.

contractual authority to go beyond awarding compensatory damages and award punitive damages to enforce the collective bargaining agreement and/or prior arbitration decisions issued thereunder. Island Creek submits that such authority should not be inferred as doing so would undermine federal labor policy in two respects.

First, although the dispute between the Petitioner and Island Creek has been ongoing in some form since 1981, and although the law on this narrow issue has been settled for several years, the parties have not modified their collective bargaining agreements so as to expressly authorize an arbitrator to issue punitive awards. In this context, to hold that, as a matter of law, an arbitrator has the authority to punish, where such punishment would be subject to only minimal court review, would

contravene federal labor policy. Specifically, it would drastically upset the parties' expectations and interfere with their ongoing relationship. As the Court of Appeals for the Seventh Circuit observed in Miller Brewing Company v. Brewery Workers Local Union No. 9, 739 F.2d 1159, 1165 (8th Cir. 1984):

> [A]rbitrators are rarely thought authorized to award punitive damages. It is not the kind of remedy that the parties probably would have agreed to authorize if they had thought about the matter, because of the great power it would give the arbitrator (subject to virtually no judicial review), and the bitter note a claim for punitive damages could inject into the parties' relationship,

which is a continuing one.

See also Raytheon Company, 882 F.2d at 10 ("Punitive actions are disfavored; the award of punitive damages in the midst of a steady stream of arbitration between a company and its unions might well undercut both sides' confidence in the arbitration process and decrease their commitment to this essential aspect of 'industrial self-government.'").

Second, since authority to issue a punitive award turns on the terms of the collective bargaining agreement, Petitioner always has the right to negotiate such authority into the parties' collective bargaining agreement. Indeed, federal labor policy would be furthered by negotating such authority, rather than obtaining it by court decree, as federal labor policy supports good faith bargaining. See Sections 8(a)(5), (b)(3), and (d) of the National Labor

Relations Act, 29 U.S.C. Sections 158(a)(5), (b)(3), and (d).

Accordingly, Petitioner has an adequate remedy under the Court of Appeals' decision and, in fact, Petitioner's requested relief should be rejected as it would undermine federal labor policy.

B. The Court Of Appeals' Decision Falls Within The Constraints Imposed By Misco.

Although Misco limits a court's review of a labor arbitration award, the award "must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice." Misco, 484 U.S. at 38. Thus, if the arbitrator is not even arguably acting within the scope of his or her authority, the award does not draw its essence from the agreement and may be vacated. Id.

The Court of Appeals vacated the punitive aspects of Arbitrator Cantor's Award because it found that the NBCWA did not authorize him to issue punitive awards. This finding is supported by the express terms of the NBCWA (which do not provide any such authority), as well as several prior decisions from the only Circuits to have addressed this narrow question.

Accordingly, the Court of Appeals properly vacated the punitive aspects of Arbitrator Cantor's Award under Misco.

III. This Court's Recent Issuance Of A Writ Of Certiorari In A Case Involving A Punitive Damage Award In A Commercial Arbitration Does Not Warrant The Granting Of This Petition.

This Court recently granted certiorari in a case involving a punitive award in a commercial arbitration. See Mastrobuono v. Shearson, Leeman, Hutton,

Inc., 62 L.W. 2625 (1994).[2] Nevertheless, the questions in Mastrobuono are far different than those presented herein.

The questions presented in Mastrobuono are as follows:

> (1) Did Seventh Circuit err in holding, contrary to rulings of First, Eighth, Ninth, and Eleventh Circuits, that law of state named in choice of law provision, rather than Federal Arbitration Act, governs arbitrability of claim for punitive damages arising out of contract that evidences transaction involving commerce and that contains comprehensive arbitration clause? (2) Did

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[2] The Court of Appeals' decision is reported at 20 F.2d 713 (7th Cir. 1994).

> Seventh Circuit err in holding, contrary to precedent of this court and Eleventh Circuit, that party to contract waives right to recover punitive damages by entering into contract that provides that agreement is governed by law of state that does not permit arbitral awards of punitive damages and comprehensive arbitration clause?

62 L.W. at 2625.

In contrast, this case (a) involves a private labor arbitration award subject to review under the Act, rather than a commercial arbitration award subject to review under the Federal Arbitration Act, (b) involves consideration of federal labor policies which are not applicable to commercial arbitrations, and (c) there is no split in the Circuits on the narrow

issue presented herein under Section 301(a) of the Act, 29 U.S.C. Section 185(a). Accordingly, consideration of the questions presented in Mastrobuono will not be enhanced or furthered by consideration of this case.

CONCLUSION

The narrow issue presented by this case is whether an arbitrator, in a private labor arbitration subject to review under Section 301 of the Act, exceeds the scope of his authority by awarding punitive damages where the collective bargaining agreement does not expressly empower the arbitrator to issue punitive awards. The Circuits that have addressed this narrow issue have unanimously held that an arbitrator exceeds the scope of his authority by issuing such an award, and that conclusion is consistent with federal labor policy, which favors adding rights under collective bargaining agreements by negotiation, rather than court decree.

Accordingly, for all of these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

POLITO & SMOCK, P.C.

By _____
David J. Laurent

Four Gateway Center
Suite 400
Pittsburgh, PA 15222
(412) 394-3333

By _____
Daniel L. Fassio

1800 Washington Road
Pittsburgh, PA 15241
(412) 831-4104

Counsel for Island Creek Coal Company

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1994, in compliance with Rule 29 of the Rules of the United States Supreme Court, three true and correct copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari were mailed, by regular mail, postage prepaid, to the following counsel for United Mine Workers of America, District 28:

Sue Ella Kobak
Kobak & Oglebay
P.O. Box 278
Pound, VA 24279

POLITO & SMOCK, P.C.

By _____
David J. Laurent

Four Gateway Center
Suite 400
Pittsburgh, PA 15222
(412) 394-3333)

Counsel for Island Creek Coal Company